

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

ROBERT E. BENNETT,

Petitioner,

v.

CIVIL ACTION NO. 2:14-cv-10133

MARVIN C. PLUMLEY,

Respondent.

ORDER

This action was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings of fact and recommendation for disposition pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Tinsley submitted proposed findings and recommended [Docket 3] that I dismiss the plaintiff's Petition for Writ of Mandamus for Immediate Release from Custody ("Petition") [Docket 1]. Judge Tinsley's Proposed Findings and Recommendation ("PF&R") recommended I deny the petition "as being legally frivolous and failing to state a claim upon which relief can be granted." (PF&R [Docket 3], at 3-4). As noted in the PF&R, "[t]o the extent that the petitioner is seeking mandamus relief, he is asking a federal court to order a state court or its employees to act in a particular manner. A federal writ of mandamus will not lie to compel a state officer to perform a duty owed to a petitioner." (*Id.* at 2).

The PF&R instructed the plaintiff that he had seventeen days to file objections to the PF&R with the court (fourteen days for the filing of objections and three days for service and mailing). (*See* PF&R [Docket 3], at 4). The PF&R further instructed the plaintiff that failure to file written

objections would constitute a waiver of de novo review of the PF&R. (*See id.*). Despite this notice, rather than file objections to the PF&R, the plaintiff appealed the PF&R to the Fourth Circuit. (*See* Notice of Appellate Case Opening [Docket 4]).

I have reviewed the PF&R and construed the plaintiff's appeal as an objection to it. I hereby **ADOPT** the PF&R and **FIND** that this court lacks jurisdiction over the Petition. The Petition [Docket 1] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: August 5, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE